

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SANDY BAEZ,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:10-24
)	
CORNELL COMPANIES, INC, et al.,)	Judge Kim R. Gibson
)	Magistrate Judge Cathy Bissoon
Defendants.)	
)	

MEMORANDUM ORDER

Sandy Baez (“Plaintiff”) is a federal inmate housed at Moshannon Valley Correctional Center (“MVCC”). Plaintiff alleges that Defendants violated his rights under the United States Constitution, and seeks recovery pursuant to 42 U.S.C. § 1983, the Supreme Court’s holding in Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), and various State tort laws. This case commenced on January 25, 2010, with the receipt of the complaint by this Court. (Doc. 1). Plaintiff was granted leave to proceed *in forma pauperis* (“IFP”) on March 3, 2010 (Doc. 5). This case was referred to United States Magistrate Judge Cathy Bissoon for pretrial proceedings, in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrates.

On May 20, 2010, motions to dismiss were filed by Defendants Coren and Williams (Doc. 37); and by Defendants Buckles, Cornell Companies, Inc., Agra, Romero, MVCC, Zenk, Rohrbacker, and Dawson (Doc. 40). On May 24, 2010, a motion to dismiss was filed by Defendant Zlupko (Doc. 43). Also on May 24, 2010, Defendants Federal Bureau of Prisons (“FBOP”) and Juster filed a motion to substitute party (Doc. 45) and a motion to dismiss, or in

the alternative, motion for summary judgment (Doc. 47). Plaintiff filed responses to these motions on June 21, 2010 (Doc. 51), June 30, 2010 (Doc. 52), and July 13, 2010 (Doc. 53). On July 22, 2010, Defendants FBOP and Juster filed a reply brief (Doc. 55) to Plaintiff's response (Doc. 53) to their motion (Doc. 47), and Plaintiff responded thereto on August 5, 2010 (Doc. 56).

On December 23, 2010, the magistrate judge issued a report and recommendation recommending that all of the above-mentioned motions be granted. (Doc. 58). Plaintiff filed objections to the report on January 13, 2011. (Doc. 59). Responses to Plaintiff's objections were filed by various Defendants on January 18, 2011 (Doc. 60), January 20, 2011 (Doc. 61), and on January 21, 2011 (Doc. 65).¹

After *de novo* review of the pleadings and documents in the case, together with the report and recommendation (Doc. 58), Plaintiff's objections thereto (Doc. 59), and Defendants' subsequent responses (Docs. 60, 61, and 65), the following ORDER is entered:

AND NOW, this 25th day of January, 2011,

IT IS HEREBY ORDERED that Defendants Dr. Alfred B. Coren and Dr. R.G. Williams' Motion to Dismiss (Doc. 37) is GRANTED.

IT IS FURTHER ORDERED that Defendants Daniel Buckles, Cornell Companies, Inc., Dr. Agra, Dr. Romero, Moshannon Valley Correctional Center, Mr. Michael Zenk, Mr. Rohrbacker, and Ms. Dawson's Motion to Dismiss (Doc. 40) is GRANTED .

¹ Defendants Coren and Williams appear, in their response, to interpret the report to recommend dismissal of Count X of the complaint with prejudice with respect to them. See (Doc. 65) ¶ 17. In fact, the magistrate judge explicitly recommends that Count X be dismissed without prejudice with respect to these Defendants, so that Plaintiff might be given the opportunity to allege facts establishing the existence of diversity jurisdiction. (Doc. 58) at 16.

IT IS FURTHER ORDERED that Defendant Dr. G.M. Zlupko's Motion to Dismiss (Doc. 43) is GRANTED.

IT IS FURTHER ORDERED that Defendants Federal Bureau of Prisons and Paul Juster's Motion for Substitution of Party (Doc. 45) is GRANTED with respect to Plaintiff's State law negligence claims against those Defendants, and Plaintiff's claims against the United States are DISMISSED for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that Defendants Federal Bureau of Prisons and Paul Juster's Motion to Dismiss or in the Alternative, Motion for Summary Judgment (Doc. 47) shall be treated as a motion to dismiss in part and a motion for summary judgment in part and GRANTED.

IT IS FURTHER ORDERED that the claims in Plaintiff's Complaint (Doc. 6) shall be disposed of in the following manner:

1. Counts I, II, and III (claims under § 1983) are DISMISSED WITH PREJUDICE with respect to all Defendants;
2. Count IV (Bivens claim against individual Defendants for violation of Eighth Amendment) and Count V (Bivens claim against individual Defendants for violation of Fifth Amendment) against Defendants Zenk, Agra, Romero, Dawson, Buckles, Rohrbacker, Williams, Coren, and Zlupko are DISMISSED WITH PREJUDICE;

3. Summary Judgment is entered in favor of Defendant Juster on Count IV (Bivens claim against individual Defendants for violation of Eighth Amendment) and Count V (Bivens claim against individual Defendants for violation of Fifth Amendment);
4. Count VI (Bivens claim against FBOP) is DISMISSED WITH PREJUDICE, because Defendant FBOP and Defendant Juster, in his official capacity, are entitled to sovereign immunity;
5. Count VII (negligence against Cornell), Count VIII (negligence against MVCC), and Count X (negligence against individual Defendants) against Defendants Zenk, Agra, Romero, Dawson, Buckles, Rohrbacker, Williams, Coren, and Zlupko, are DISMISSED WITHOUT PREJUDICE to Plaintiff's ability to allege facts establishing diversity jurisdiction;
6. Count IX (negligence against the United States), and Count X (negligence against individual Defendants) against Defendant Juster, are DISMISSED WITH PREJUDICE; and
7. Count X (negligence against individual Defendants) against Defendants Coren, Williams, and Zlupko, is DISMISSED WITHOUT PREJUDICE because Plaintiff failed to file certificates of merit, as required under Pennsylvania law.

IT IS FURTHER ORDERED that Plaintiff shall, if appropriate, file an Amended Complaint within twenty-one days of the date of this Order.

IT IS FURTHER ORDERED that the magistrate judge's report and recommendation (Doc. 58) is adopted as the opinion of this Court on this matter.

A handwritten signature in black ink, appearing to read "Kim R. Gibson". The signature is written in a cursive, flowing style with a large initial "K" and "G".

KIM R. GIBSON
UNITED STATES DISTRICT JUDGE

cc:

SANDY BAEZ

05749-070

MVCC

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